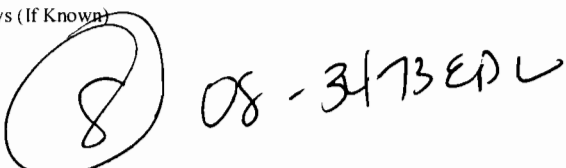


JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL UNION NO. 3, AFL-CIO, ET AL.	DEFENDANTS JOHN LONEY PALOMINO, ET AL.
(b) County of Residence of First Listed Plaintiff ALAMEDA (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant SACRAMENTO (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) KENT KHTIKIAN AND KIMBERLY HANCOCK KATZENBACH AND KHTIKIAN 1714 STOCKTON ST., SUITE 300 SAN FRANCISCO, CA 94133-2930; (415) 834-1778	Attorneys (If Known) 

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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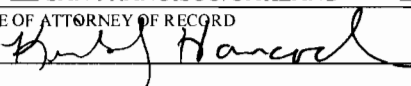
V. ORIGIN (Place an "X" in One Box Only)	Transferred from Appeal to District
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC Section 1132 and 1145 Brief description of cause: Action to collect delinquent fringe benefit contributions to a multi-employee benefit plan.
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".
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IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE
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DATE <u>July 17, 2008</u>	SIGNATURE OF ATTORNEY OF RECORD 
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FILED
08 JUL 18 PM 2:00
RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Kent Khtikian, Esq. (#99843)
Kimberly A. Hancock Esq. (#205567)
Katzenbach and Khtikian
1714 Stockton Street, Suite 300
San Francisco, California 94133-2930
Telephone: (415) 834-1778
Facsimile: (415) 834-1842

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDL

CV 08

3473

BRICKLAYERS AND ALLIED CRAFTWORKERS)
LOCAL UNION NO. 3, AFL-CIO;)
TRUSTEES OF THE NORTHERN CALIFORNIA)
TILE INDUSTRY PENSION TRUST; TRUSTEES)
OF THE NORTHERN CALIFORNIA TILE)
INDUSTRY HEALTH AND WELFARE TRUST FUND;)
TRUSTEES OF THE NORTHERN CALIFORNIA)
TILE INDUSTRY APPRENTICESHIP AND)
TRAINING TRUST FUND; TILE INDUSTRY)
PROMOTION FUND OF NORTHERN CALIFORNIA,)
INC., a not-for-profit California)
corporation; TILE EMPLOYERS CONTRACT)
ADMINISTRATION FUND; TRUSTEES OF THE)
INTERNATIONAL UNION OF BRICKLAYERS AND)
ALLIED CRAFTWORKERS PENSION FUND,)

Plaintiffs,

vs.

JOHN LONEY PALOMINO, as an individual)
and doing business as "L R F Resinous)
Flooring"; AMERICAN CONTRACTORS)
INDEMNITY COMPANY, a California)
corporation,)

Defendants.

Plaintiffs, and each of them, complain against the above-named defendants and allege as follows:

I
FIRST CLAIM FOR RELIEF
(Delinquent Contributions)
(29 U.S.C. Section 1145)
(As to John Loney Palomino)

1 1. This is an action to collect unpaid contributions to
2 multiemployer benefit plans pursuant to the terms of each plan,
3 its respective trust agreement and a collective bargaining
4 agreement. Jurisdiction of this action is conferred on this
5 Court by the provisions of the Employee Retirement Income
6 Security Act of 1974 ("ERISA"), 29 U.S.C. Sections 1132(a), (e),
7 and (f) and 1145. Jurisdiction of this action is also conferred
8 on this Court by the provisions of 28 U.S.C. Section 1331(a).

9 2. This District is the appropriate venue for this action,
10 pursuant to 29 U.S.C. Section 1132(e)(2), as all of the plans are
11 administered in this District and the breach took place in this
12 District.

13 3. Plaintiff, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED
14 CRAFTWORKERS, AFL-CIO, LOCAL NO. 3, an affiliate of the
15 International Union Of Bricklayers And Allied Craftsmen, AFL-CIO,
16 hereinafter the "Union", is and at all times material herein was
17 a labor organization and the collective bargaining representative
18 for persons who are engaged, by defendants as masons in the
19 construction industry in Northern California. As such the Union
20 is a employee organization representing employees in an industry
21 affecting commerce, within the meaning of Section 301 of the
22 LMRA, the definitions contained in Sections 2(5), and 501(1) and
23 (3) of the LMRA (29 USC Sections 152(5), 142(1) & (3)) and 29
24 U.S.C. Sections 1002(4) and 1003. The Union maintains its
25 principal office for such purpose in Oakland, California.

26 4. The Union brings this action on behalf of itself and as
27 agent for and assignee of its members, all of whom were employed
28 by JOHN LONEY PALOMINO doing business as "L R F Resinous

1 Flooring" to perform work under the collective bargaining
2 agreement described in paragraphs 8, 9, and 17 through 19 of this
3 complaint.

4 5. Plaintiffs, TRUSTEES OF THE NORTHERN CALIFORNIA TILE
5 INDUSTRY PENSION TRUST (hereinafter the "Pension Trust"),
6 TRUSTEES OF THE NORTHERN CALIFORNIA TILE INDUSTRY HEALTH AND
7 WELFARE TRUST FUND (hereinafter the "Welfare Trust") , TRUSTEES
8 OF THE NORTHERN CALIFORNIA TILE INDUSTRY APPRENTICESHIP AND
9 TRAINING TRUST FUND (hereinafter the "Apprentice Trust"), and
10 TRUSTEES OF THE INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED
11 CRAFTWORKERS PENSION FUND (hereinafter the "International Pension
12 Trust") are trustees and fiduciaries of multiemployer employee
13 benefit plans pursuant to ERISA, 29 U.S.C. Sections 1002(3) and
14 (37) and 1132(d)(1). The Welfare Trust, the Pension Trust, and
15 Apprentice Trust each has its office in San Francisco,
16 California. Plaintiffs, TILE INDUSTRY PROMOTION FUND OF NORTHERN
17 CALIFORNIA, INC., a not-for-profit California corporation, and
18 TILE EMPLOYERS CONTRACT ADMINISTRATION FUND is each an express
19 trust fund pursuant to California Civil Code Section 3111
20 established pursuant to collective bargaining agreements, with
21 their office in San Francisco, California. The plaintiffs
22 identified in this paragraph is hereinafter referred to,
23 individually and collectively, as the "Trusts".

24 6. The Union brings this action on behalf of itself and as
25 agent for its members Jose Anaya and Sebastian Anaya and other
26 individuals whose identity is not currently known to plaintiffs,
27 hereinafter referred to as "Tile Employees". The Tile Employees
28 were employed by defendant JOHN LONEY PALOMINO doing business as

1 "L R F Resinous Flooring", to perform work under the collective
2 bargaining agreement described in paragraphs 8, 9, and 17 through
3 19 this complaint.

4 7. Defendant JOHN LONEY PALOMINO (hereinafter "Palomino"),
5 is, and at all times material herein was, an individual doing
6 business as "L R F Resinous Flooring", a sole proprietorship
7 with its principal office and place of business located in Elk
8 Grove, California. At all times material herein, Palomino has
9 engaged in the construction industry in California and as such
10 has been an employer engaged in an industry or activity affecting
11 commerce within the meaning of 29 U.S.C. Sections 1002(5) and
12 1003, Section 301 of the LMRA, and of the definitions contained
13 in Sections 2(2), and 501(1) and (3) of the LMRA (29 USC Sections
14 152(2), 142(1) & (3)). Palomino is a licensed tile contractor.

15 8. At all times material herein, the Union has been party to
16 a written collective bargaining agreement with Palomino which
17 agreement requires that Palomino pay various wages and fringe
18 benefits to its employees. Pursuant to the terms of the
19 collective bargaining agreement, Palomino agreed to be bound by
20 the terms and conditions of each of the trust agreements under
21 and in accordance with which each of the Funds was established
22 and is maintained.

23 9. The collective bargaining agreement and the trust
24 agreements all require Palomino to report in writing each month
25 to the administrator of the Funds the total number of hours
26 worked by any person employed by Palomino to perform work within
27 the jurisdiction of the collective bargaining agreement
28 (hereinafter referred to as the "remittance reports"). The

1 collective bargaining agreement and the trust agreements all
2 require Palomino to submit those monthly remittance reports
3 together with the payments indicated by those reports to the
4 administrator of the Trusts by the 10th day of the calendar month
5 first following the calendar month in which the hours were
6 worked.

7 10. Palomino has failed to submit payment to the trusts for
8 the amounts due for the period from August 1, 2007 through
9 February 29, 2008 in the total principal amount of \$27,105.74 as
10 shown due on the remittance reports submitted to the trusts by
11 Palomino during the period from August 1, 2007 through February
12 29, 2008.

13 11. Demand has been made for payment, but Palomino has
14 refused and continues to refuse to pay the amounts shown due on
15 the remittance reports submitted to the trusts by Palomino during
16 the period from August 1, 2007 through February 29, 2008 in the
17 total principal amount of \$27,105.74.

18 12. Pursuant to the Trust Agreements and the collective
19 bargaining agreement and by statute (ERISA section 502(g)(2)(B)),
20 if payments are not made, or if remittance reports are not
21 submitted in a timely manner, Palomino is required to pay
22 liquidated damages on the principal amount due the Trusts equal
23 to: (i) \$200 for delinquencies of 30 days or less; (ii) the
24 greater of \$300.00 or 10% of the unpaid contribution for
25 delinquencies of 31 to 60 days or less; and (iii) the greater of
26 \$400 or 20% of the unpaid contribution for delinquencies of more
27 than 60 days. This liquidated damage amount is owed on all
28 hourly fringe benefits accrued to the present, in an amount of at

1 | least \$5,421.15. In addition, under the terms of ERISA (section
2 | 502(g)(2)), the trust agreements and Article X, Section 88 of the
3 | Collective Bargaining Agreement, plaintiffs are entitled to
4 | attorney's fees, auditor's fees, interest and collection costs on
5 | any delinquency described in this complaint.

6 | 13. Plaintiffs are entitled to unpaid fringe benefits due
7 | the Pension Fund, the International Pension Fund, the Welfare
8 | Fund and the Apprentice Fund for hours during the period from
9 | August 1, 2007 through February 29, 2008 in the principal amount
10 | of at least \$27,105.74 plus interest thereon from the original
11 | date of each late payment at the rate of 10% per year, plus 20%
12 | liquidated damages in the amount of at least \$5,421.15, plus
13 | plaintiff's attorney's fees and costs, plus penalties, pursuant
14 | to 29 U.S.C. Section 1132(g)(2), Labor Code Sections 201, 203,
15 | 218.5 and 218.6, all according to proof.

16 | **II**
17 | **SECOND CLAIM FOR RELIEF**
18 | **(Breach of Contract)**
19 | **(29 U.S.C. Section 185)**
20 | (As to John Loney Palomino)

21 | 14. Plaintiffs reallege and incorporate herein by reference
22 | each and every allegation set forth in paragraphs 1 through 13,
23 | inclusive, of this complaint as though fully set forth at this
24 | point.

25 | 15. This is an action to enforce a collective bargaining
26 | agreement pursuant to 29 U.S.C. Section 185. Jurisdiction of
27 | this action is also conferred on this Court by the provisions of
28 | 28 U.S.C. Section 1331(a).

16 | 16. The Union and the persons on whose behalf the Union
17 | brings this action have duly performed all conditions of the

1 agreement on their part to be performed.

2 17. Article X, Section 86 of the collective bargaining
3 agreement provides:

4 "On or before the 10th day of each month, the
5 Individual Employer shall pay to the various Trust
6 Funds and to the administrator appointed by the Union
7 and the Association ... the amounts specified in
8 Appendices A,B,D,E, and F and such further amounts as
9 may be allocated in accordance with Section 66 (Wage
10 and Benefit Package), for each hour worked by each of
11 its employees in the preceding month, or for which such
12 employees became entitled to be paid in the preceding
13 month; ..."

14 18. Article X, Section 87 of the collective bargaining
15 agreement further provides that should Palomino fail to submit
16 reports or make the required payments by the agreed date,
17 Palomino shall be liable for liquidated damages. In relevant
18 part, the collective bargaining agreement states:

19 "It is agreed that timely payment to the Trust Funds
20 provided for in this Agreement is essential for the
21 protection of the beneficiaries and that delinquent
22 contributions entail additional trust administration
23 expenses. Since the exact amount of monetary damages
24 to the beneficiaries and the additional cost of trust
25 administration are impossible to measure, liquidated
26 damages for delinquent contributions shall be assessed
27 as follows: for any amount which is delinquent thirty
28 (30) days or less, liquidated damages shall be assessed
in the amount of \$200.00; for amounts which are
delinquent more than thirty (30) days, liquidated
damages shall be ten percent (10%) of the amount due or
\$300.00, whichever is greater; for amounts which are
delinquent more than sixty (60) days, liquidated
damages shall be twenty percent (20%) of the amount due
or \$400.00, whichever is greater."

19. Article X, Section 88 of the collective bargaining
agreement states that in the event it is necessary for the Union
or the Trusts to file an action to recover contributions or
liquidated damages, the Union and the Trusts are entitled to
recover, in addition to the above-described liquidated damages,
interest at the rate of 10% per year, attorneys' fees, court

1 costs, audit costs and any other costs or expenses incurred in
2 connection with such suit, claim or demand. The plaintiffs have
3 incurred attorney's fees and costs in an attempt to recover the
4 delinquent wage and fringe benefit payments.

5 20. Defendant Palomino breached the collective bargaining
6 agreement by refusing or failing: (i) to pay fringe benefits and
7 wages when due in the amount of at least \$27,105.74 as shown due
8 on the remittance reports submitted by Palomino during the period
9 from August 1, 2007 through February 29, 2008; (ii) to pay
10 liquidated damages in the amount of at least \$5,421.15 and
11 interest on late payments of fringe benefits as agreed; and (iv)
12 to pay attorney's fees and other collection costs in an amount to
13 be determined, all to the detriment of Plaintiffs.

14 21. As a consequence of the breach described in paragraph 20
15 above, Plaintiffs are entitled to damages in an amount equal to
16 the wages and fringe benefit payments required by the agreement
17 in an amount of at least \$27,105.74, interest thereon from the
18 original date of each late payment at the rate of 10% per year,
19 liquidated damages calculated at 20% in an amount of at least
20 \$5,421.15, penalties, attorney's fees and costs in an amount to
21 be determined, pursuant to the collective bargaining agreement,
22 the trust agreements incorporated therein to which Palomino has
23 agreed to be bound, California Civil Code section 3287, and
24 California Labor Code sections 201, 203, 218.5 and 218.6.

25 **III**

26 **THIRD CLAIM FOR RELIEF**

27 **Action on Contractor's License Bond**

28 **(California Business & Professions Code §§ 7071.11 et. seq.)**

(As to American Contractors Indemnity Company)

22. Plaintiffs reallege and incorporate herein by reference

1 each and every allegation set forth in paragraphs 1 through 13,
2 and 15 through 21 inclusive, of this complaint as though fully
3 set forth at this point.

4 23. This is an action pursuant to California Business and
5 Professions Code section 7071.11 to recover unpaid wages from
6 sureties on contractors' bonds.

7 24. Defendant, AMERICAN CONTRACTORS INDEMNITY COMPANY,
8 (hereinafter "American Contractors") is a California corporation.
9 American Contractors is engaged in the insurance and surety
10 business and issues contractor's license bonds in California.

11 25. Pursuant to California Business and Professions Code
12 section 7071.6, Palomino obtained a contractor's bond
13 underwritten by American Contractors. The bond underwritten by
14 American Contractors was designated as bond number 1000762993, in
15 effect from April 12, 2007 through the present (hereinafter
16 referred to as the "American Contractor's Bond").

17 26. The American Contractor's Bond indemnify persons
18 employed by Palomino for the failure by Palomino to pay wages due
19 for work performed during the effective period of the bonds.

20 27. During the period from August 1, 2007 through February
21 29, 2008 Palomino failed to pay its employees full wages and
22 fringe benefits as required by the collective bargaining
23 agreement. Palomino did not pay wages and fringe benefits
24 totaling at least \$27,105.74 as shown by the remittance reports
25 submitted by Palomino during the period from August 1, 2007
26 through February 29, 2008, according to proof, for work performed
27 during that period. Said sum is due from defendant American
28 Contractors.

1 28. Demand has been made for payment, but Palomino has
2 refused and continues to refuse to pay the sums owed.

3
4 **PRAYER**

5 WHEREFORE, Plaintiffs pray for judgment as follows:

6 **I. On the First Claim for Relief:**

7 For judgment against defendant John Loney Palomino as an
8 individual and doing business as "L R F Resinous Flooring":

9 (a) in the principal amount of at least \$27,105.74, plus
10 interest thereon at the legal rate from the original due dates
11 commencing September 10, 2007 until paid;

12 (b) plus plaintiffs' attorney's fees and costs;

13 (c) plus the greater of liquidated damages of at least
14 \$5,421.15, calculated at 20% of the principal amount or interest;

15 (d) plus interest at the rate of 10% per year commencing
16 September 10, 2007;

17 all according to proof, pursuant to the agreement between
18 plaintiffs and defendants, 29 U.S.C. Section 1132(g)(2), Labor
19 Code Section 218.5 and any other statute so providing.

20 **II. On the Second Claim for Relief:**

21 For judgment against defendant John Loney Palomino as an
22 individual and doing business as "L R F Resinous Flooring":

23 (a) in the principal amount in excess of \$27,105.74, plus
24 interest thereon at the legal rate from the original due dates
25 commencing September 10, 2007 until paid;

26 (b) plus plaintiffs' attorney's fees and costs in an amount
27 to be determined;

28 (c) plus the greater of liquidated damages of at least

1 \$5,421.15, calculated at 20% of the principal amount or interest;

2 (d) plus interest at the rate of 10% per year commencing
3 September 10, 2007;

4 all according to proof, pursuant to the agreement between
5 plaintiffs and defendants, 29 U.S.C. Section 1132(g)(2), Labor
6 Code Section 218.5 and any other statute so providing; and,
7 For penalties against defendant John Loney Palomino as an
8 individual and doing business as "L R F Resinous Flooring",
9 pursuant to California Labor Code Section 203.

10 **III. On the Third Claim for Relief:**

11 For judgment against defendant American Contractors Indemnity
12 Company:

13 (a) for unpaid wages in the amount of at least \$27,105.74;

14 (b) for plaintiffs' attorney's fees and costs, interest and
15 penalties; and

16 (c) for interest at the rate of 10% per year commencing
17 September 10, 2007 pursuant to California Civil Code section
18 3287, California Labor Code section 218.5 and any other statute
19 so providing, all according to proof.

20 **IV. On Each and Every Claim for Relief:**

21 For such relief as the Court deems proper.

22
23 Plaintiffs hereby request a jury trial pursuant to FRCivP 38(b).
24

25 Dated: July 17, 2008

KATZENBACH AND KHTIKIAN

26
27 
28 KIMBERLY A. HANCOCK
Attorney for Plaintiffs